

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.24 Motion to Dismiss Because of Double Jeopardy— Multiple Punishments for the Same Offense

Insert the following case summary before the last full paragraph on page 56:

Armed robbery and safe robbery are different offenses prohibited by statutes aimed at preventing different types of harm; therefore, a defendant's conviction and sentence for both offenses does not offend the defendant's double jeopardy protections. *People v Ford*, ___ Mich App ___, ___ (2004). In *Ford*, a defendant convicted of armed robbery, safe robbery, home invasion, and felony-firearm at a single trial appealed his convictions and sentences for both robbery charges on the basis that the convictions and sentences constituted multiple punishment for the same offense in violation of his constitutional protections against double jeopardy. *Ford, supra*, ___ Mich App at ___.

The *Ford* Court first noted that the Michigan Supreme Court's decision in *People v Nutt*, ___ Mich ___ (2004) (included in the June 2004 update), while signaling a return to the "same elements" test for determining whether double jeopardy protections prohibited successive prosecutions for the "same offense," did not address the multiple punishment prong of a defendant's double jeopardy protections. *Ford, supra*, ___ Mich App at ___ n 2. The *Blockburger* "same elements" test creates only a presumption that the "legislature intended multiple punishments where two distinct statutes cover the same conduct but each requires proof of an element the other does not; the contrary presumption arises when one offense's elements are encompassed in the elements of the other." *Ford, supra*, ___ Mich App at ___. Either presumption may be overcome by a clear legislative expression of contrary intent. *Ford, supra*, ___ Mich App at ___. The *Ford* Court explained:

"[U]nder both the federal and Michigan Double Jeopardy Clauses the test is the same: 'in the context of multiple punishment *at a*

single trial, the issue whether two convictions involve the same offense for purposes of the protection against multiple punishment is solely one of legislative intent.” *Ford, supra*, ___ Mich App at ___, quoting *People v Sturgis*, 427 Mich 392, 399 (1986).

With respect to ascertaining legislative intent, the *Ford* Court repeated principles set forth by the Michigan Supreme Court in *People v Robideau*, 419 Mich 458 (1984):

“Statutes prohibiting conduct that is violative of distinct social norms can generally be viewed as separate and amenable to permitting multiple punishments. A court must identify the type of harm the Legislature intended to prevent. Where two statutes prohibit violations of the same social norm, albeit in a somewhat different manner, as a general principle it can be concluded that the Legislature did not intend multiple punishments.” *Ford, supra*, ___ Mich App at ___, quoting *Robideau, supra* at 487–488.

The *Ford* Court applied both the *Blockburger* “same elements” test and the *Robideau* “type of harm” test to the facts before it and found that the defendant’s convictions and sentences for both armed robbery and safe robbery, obtained at a single trial and established by the same conduct, were different offenses prohibited by statutes intended to protect the public from different types of harm. *Ford, supra*, ___ Mich App at ___. That is, the defendant’s convictions were for two offenses each containing an element different from the other and obtained under statutes intended to prevent different types of harm.